

1 COMMONWEALTH OF MASSACHUSETTS
2 DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
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6 FIBER TECHNOLOGIES NETWORKS, L.L.C.)
7 140 Allens Creek Road)
8 Rochester, NY 14618)
9)

10 Complainant,)
11)

12 v.)

D.T.E. 01-70

13)
14 TOWN OF SHREWSBURY ELECTRIC)
15 LIGHT PLANT)
16 100 Maple Avenue)
17 Shrewsbury, MA 01545-5398)
18)

19 Respondents.)
20 _____)
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26 Direct Testimony of

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28 **Frank Chiaino**

29
30 witness for

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32 Fiber Technologies Networks, L.L.C.
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34 November 9, 2001
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Q: Please state your name, position and business address.

A: My name is Frank Chiaino. I am the Chief Operating Officer of Fibertech Networks, LLC, the sole member of Fiber Technologies Networks, L.L.C. (“Fibertech”), 140 Allens Creek Road, Rochester, New York, 14618.

Q: What are your responsibilities at Fibertech?

A: I am responsible for the day-to-day operations of Fibertech, primarily the design, construction and management of the networks.

Q: How long have you worked at Fibertech?

A: Since January 2000. I am a founder of Fibertech.

Q: Prior to joining Fibertech, what was your business background?

A: I had a 30-year career with Time Warner Cable. While there, I built and managed the nation’s first urban cable system as Vice President and Chief Operating Officer of Time, Inc.’s Manhattan Cable. I then became President and CEO of Time Warner Cable’s cable television and telephone operations at its Division in Rochester, New York, and also served as a corporate Vice President of Time Warner Cable. In 1998, I joined Fibernet in New York City, a fiber carrier, as President and CEO. I left Fibernet to start up Fibertech.

Q: During your time at Manhattan Cable TV, Time Warner, or Fibernet, did you have any dealings with pole attachments?

A: Yes. I have dealt with pole attachments since 1983, beginning in Rochester, New York. There, I presided over the build-out of cable and telecommunications networks and the maintenance and upgrade of approximately 3500 route miles of facilities using hybrid

1 fiber transport technology. I was extensively involved on behalf of Time Warner in all
2 aspects of Division policy issues involving poles.

3 **Q:** What is the purpose of your testimony?

4 **A:** My testimony is being presented on Fibertech's behalf in support of its complaint against
5 the Shrewsbury Electric Light Plant's denial of access to poles.

6 **Q:** Could you summarize your testimony?

7 **A:** Yes. First, I will discuss background information on Fibertech. Then, I will demonstrate
8 that the services Fibertech provides are telecommunications services, and that wholesale
9 providers like Fibertech are an important segment of a competitive telecommunications
10 marketplace.

11 **Q:** What type of company is Fibertech?

12 **A:** Fibertech is a New York limited liability company with its principal place of business at
13 140 Allens Creek Road, Rochester, New York.

14 **Q:** What is the nature of Fibertech's business?

15 **A:** Fibertech is a pioneer in designing, building and leasing dark fiber networks in second
16 and third tier markets primarily in the Northeastern United States. By second and third
17 tier markets, I mean cities and smaller metropolitan areas that, because of their size,
18 density, or location with respect to other large cities or metropolitan areas and
19 telecommunications centers, have not been targeted for telecommunications investment.
20 The networks are metro-area networks, and generally not inter-city connections.
21 Fibertech expects to build out 43 such markets by 2005. As Fibertech's market footprint
22 evolves, Fibertech plans to lease lit services to our customers, just as many other new

entrants in telecommunications markets have expanded service after providing wholesale services and facilities to establish a market presence.

Q: What are the facilities that Fibertech constructs?

A: Fibertech constructs state-of-the-art fiber optic networks with transmission capabilities of 10-40 gigabits, and capacity levels from OC-3 to OC-192 are provided. These transmission capabilities and capacity levels will support all of the most advanced bandwidth technologies, including SONET, Dense Wave Division Multiplexing, ATM, and video.

Q: What do you mean by “dark fiber”?

A: Dark fiber is fiber optic cable constructed and leased without the electronics necessary to transmit light impulses. Initially, individual customers will supply electronics according to their own needs to “light” the fiber.

Q: Is Fibertech’s fiber optic cable for the transmission of intelligence?

A: That is the entire reason for constructing this network – to put in place facilities capable of transmitting intelligence consisting of voice, data, and video information in the form of optical impulses.

Q: Does Fibertech have facilities in place?

A: Fibertech has completed networks in the following cities in New York: Syracuse, Albany, Rochester, Buffalo, Geneva, Batavia, Cortland, and Palmyra. Fibertech has networks in progress in Springfield, Massachusetts; Worcester, Massachusetts; New Haven, Connecticut; Hartford, Connecticut; Providence, Rhode Island; Indianapolis, Indiana; Pittsburgh, Pennsylvania; Milwaukee, Wisconsin; and Columbus, Ohio. Portions of the Hartford and Pittsburgh networks are completed.

1 **Q:** Is Fibertech currently providing service?

2 **A:** Yes. In New York, Fibertech has four networks in place with customers on all four
3 networks. Also, Fibertech is providing service over the completed portions of the
4 Hartford and Pittsburgh networks.

5 **Q:** Who are the customers Fibertech serves?

6 **A:** Fibertech currently is primarily a carrier's carrier. Its primary customers are CLECs,
7 IXCs, and both private and public entities such as businesses and educational institutions
8 with telecommunications expertise and demand for transmission on a large scale. On
9 June 7, 2000, Fibertech signed an \$85 million Master Agreement with Choice One
10 Communications, a publicly-traded CLEC that provides a full range of
11 telecommunications services to small to medium size businesses. Choice One is
12 Fibertech's anchor tenant in twelve to twenty-three markets. Fibertech also has signed
13 contracts with AT&T, Qwest, Allegiance, CTC, Global Crossings, Connecticut
14 Telephone, and the State of Connecticut. The State of Connecticut uses Fibertech's
15 networks to connect two primary data centers. The State of Connecticut projects that
16 Fibertech's networks will be needed for other projects in the near future, including
17 connecting state colleges and school districts. Fibertech has begun marketing to similar
18 institutions in Massachusetts, and has been contacted by a school district in the Worcester
19 area. Fibertech has approximately \$175 million worth of signed contracts to date.

20 **Q:** What areas of Massachusetts does Fibertech plan to serve?

21 **A:** Fibertech plans to serve Springfield and Worcester, Massachusetts.¹ In Springfield,
22 Fibertech expects to have 70-75 miles of network, and in Worcester, Fibertech expects to
23 have 110 miles of network. Both of these markets are underserved, and Fibertech's

¹ A true copy of Fibertech's map illustrating the targeted locations is attached as Attachment 1.

1 network will connect enterprise customers and key telecommunications locations, such as
2 Verizon's central offices, telecommunications carriers' points of presence, large
3 buildings, and office parks.

4 **Q:** Why has Fibertech targeted these areas?

5 **A:** We target second and third tier metro markets because they are underserved and in need
6 of state of the art broadband facilities that we believe will foster facilities-based
7 competition in the telecommunications marketplace. Fibertech's networks will serve the
8 carriers' needs for low-cost local and regional transport. There is also a demand for
9 broadband capacity for multimedia and other new applications. The demand for these
10 state of the art facilities is not being met by existing providers.

11 **Q:** What benefits do Fibertech's facilities bring to customers and/or end users in these
12 markets?

13 **A:** Fibertech provides unlimited bandwidth at affordable cost. Providing this to carrier
14 customers and others permits the customers to have control over their own fiber, and
15 enables carriers to become facilities based with a reasonably low investment, thus
16 improving their own margins. Fibertech's open architecture appeals to a broad range of
17 users, and Fibertech's networks allow a wide-variety of carriers and others to share
18 facilities, thus diminishing the need to construct carrier-based facilities and additional
19 pole attachments. Fibertech's network investment helps promote competitive entry by
20 other carriers, and upgraded lower cost services spark economic development and other
21 benefits of advanced competitive telecommunications.

22 **Q:** Who are your competitors?

1 **A:** In general, facilities-based carriers' carriers and dark fiber carriers are competitors.
2 Verizon is also a competitor of Fibertech. Under the Department's interconnection
3 rulings, Verizon offers dark fiber as an unbundled network element. NEESCom, NEON,
4 and Duquesne Light are competitors. American Fibersystems and Metromedia Fiber
5 Network Services, Inc. are potential competitors as well, currently providing service in
6 other geographical areas.

7 **Q:** Do these competitors have pole attachment agreements in Massachusetts?

8 **A:** I don't know specifically whether they have agreements, but I am aware that NEESCom,
9 NEON, and Metromedia Fiber have aerial plant in locations served by unaffiliated
10 utilities. To construct this plant, they must have pole attachment agreements.

11 **Q:** To your knowledge, does the DTE regard dark fiber providers as telecommunications
12 carriers?

13 **A:** I do not speak for the DTE, but I am aware that the DTE has stated that it does regard
14 dark fiber providers as telecommunications carriers.

15 **Q:** Please explain what you are referring to.

16 **A:** In a letter dated October 20, 1999, Michael Isenberg, the Department's
17 Telecommunications Division Director, wrote to Alan D. Mandl: "I can confirm that the
18 Department considers the wholesale provision of dark fiber to be a common carrier
19 telecommunications service subject to our authority."²

20 **Q:** Has Fibertech filed a Statement of Business Operations in Massachusetts?

21 **A:** Yes. It was filed on August 9, 2001.³

22 **Q:** How about a tariff?

² A true copy of a letter from the DTE is attached as Attachment 2.

³ A true copy of Fibertech's Statement of Business Operations is attached as Attachment 3.

1 **A:** Yes. Fibertech filed its tariffs M.D.T.E. Tariff No. 1 and M.D.T.E. Tariff No. 2 on
2 August 9, 2001, and these became effective on September 8, 2001.⁴

3 **Q:** Does Fibertech have any interconnection agreements?

4 **A:** Fibertech obtains service from Verizon pursuant to Verizon's Competitive Access
5 Transport Termination tariff.

6 **Q:** Has Fibertech been certified as a telecommunications common carrier in other states?

7 **A:** Yes. Fibertech has been certified as a telecommunications common carrier in New York,
8 Connecticut, Indiana, Pennsylvania and Wisconsin.

9 **Q:** Does Fibertech have pole attachment agreements with utilities in Massachusetts?

10 **A:** Yes. Fibertech has such agreements with Verizon, Massachusetts Electric (National
11 Grid), Western Massachusetts Electric, and the municipal lighting plants of Templeton
12 and Holden. The agreements with the Templeton and Holden light plants are tri-party
13 agreements with Fibertech and Verizon.

14 **Q:** Have these utilities required that Fibertech obtain local municipal authorizations prior to
15 obtaining attachment agreements?

16 **A:** No.

17 **Q:** Has that ever been your experience with other utilities?

18 **A:** The normal pattern for Fibertech in other locations and in my cable experience is to sign
19 a master attachment agreement with utilities establishing rates, terms, and conditions for
20 access to poles, conduits, and rights of way; and then apply for specific licenses under the
21 agreement for specific locations. Applying for permits from local governments comes
22 after private sector agreements are in place.

⁴ A true copy of Fibertech's M.D.T.E. No. 1 Tariff is attached as Attachment 4, and of Tariff M.D.T.E. No. 2 as Attachment 5.

1 **Q:** Did Fibertech apply for pole attachments from the Town of Shrewsbury Electric Light
2 Plant (“SELP”)?

3 **A:** Yes.

4 **Q:** What happened?

5 **A:** Fibertech was denied access. The testimony of Jennifer Starks and Mario R. Rodriguez
6 describes in greater detail how this took place over a period beginning more than a year
7 before this complaint was filed. I joined Mario Rodriguez and our General Counsel
8 Charles Stockdale on a lengthy conference call with Thomas Josie of SELP on May 10,
9 2001 in effort to find ways to resolve reasonable terms for attachment to SELP poles.
10 We explored alternatives to SELP’s insistence on taking ownership of facilities built by
11 Fibertech but, as a result of this call, we concluded that Fibertech should pursue pole
12 attachment according to Massachusetts law. In a letter dated May 11, 2001, Charles
13 Stockdale informed Mr. Josie accordingly.⁵

14 **Q:** What is the impact on Fibertech of denying pole attachments?

15 **A:** Fibertech’s networks are 85% aerial, so pole attachments are essential to construction of
16 our network. Without pole attachments, Fibertech cannot build its network, and thus
17 cannot compete in the marketplace and bring any benefits of its advanced broadband
18 facilities to underserved markets surrounding Shrewsbury. And especially in a time of
19 uncertainty in telecommunications markets, delay by incumbents is an effective way of
20 detering competition.

21 **Q:** Does this conclude your testimony at this time?

22 **A:** Yes, it does.

⁵ A true copy of Mr. Stockdale’s letter is attached to the testimony of Mario R. Rodriguez as Attachment 1.